IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.953 OF 2004

Smt.Hirabai Namdeo Bhagat & Ors. ...Appellants

Vs.

Dinkar Bapurao Bhagat ...Respondent

Mr.Milind Deshmukh for the Appellants
Mr.Mr.M.B.Shirsat with Mr.Nitin R.Jadhav for the Respondent.

CORAM: A.S.OKA, J.
DATED: APRIL 6,2005.

P.C.:

1. Heard Advocates for the parties. The Appeal is by unsuccessful Defendants. The preliminary decree for redemption of mortgage has been passed in favour of the Respondent-Plaintiff by the Appellate Court.

2. Shri Deshmukh, learned Counsel for the Appellants placed reliance on the Judgment of learned Single Judge of this Court reported in A.I.R. 1982 Bombay page No.437 (Nana Tukaram Jaikar Vs. Sonabai & others) and submitted that by the transaction in dispute, no relationship of debtors and creditor is created between the parties. He pointed out that in absence of any such relationship, the transaction cannot be held as mortgage. He submitted that the possession of the suit land was handed over to the Appellants and the Appellants were required to pay taxes. He therefore submitted that the transaction cannot be a mortgage.

3. In paragraph No.11 of the decision of the learned Single Judge of this Court in case of Nana Tukaram (supra) this Court held that the relationship of debtor and creditor can be inferred even by implication. If paragraph No.11 and 13

of the Judgment of the learned Single Judge are read together, it is apparent that reference to various aspects viz. payment of municipal Taxes by the alleged mortgagee, failure to create charge etc. is in the facts of the case before the learned Single Judge. Paragraph No.13 clearly indicates that these are the surrounding circumstances which are taken into consideration by the learned Single Judge in the facts of the case before him.

4. The Appellate Court has accepted the oral testimony of the Respondent-Plaintiff in which he stated that he was in need of money for medical treatment and therefore he requested the original defendant to advance a sum of Rs.400/- by way of loan. After considering the oral evidence of the Respondent-Plaintiff the learned Appellate Court accepted the same. The Appellate Court also noted that the Appellants did not enter the witness box and have not examined any other witness. The Appellate Court also relied upon the recitals in the document and came to the conclusion that there is clear reference to right of redemption in favour of the Respondent.

5. In my view the findings recorded by the Appellate Court are based on oral and documentary evidence on record. There is no perversity in the findings of the Appellate Court. No substantial question of law arises in the Appeal. Second Appeal is dismissed with no order as to costs.

Judge.